



Choosing a Business Structure – A Comparison

In starting a business, individuals and groups have much to consider. One of the first steps in organizing any business is to determine whether the business is to be a single proprietorship, a partnership or a corporation. This document is for groups who are seeking to use a corporate model for either a not-for-profit or a for-profit enterprise.

Not-for-profit businesses essentially have two choices for incorporation: *The Non-Profit Corporations Act* or *The Co-operatives Act, 1996*. For-profit businesses can incorporate either under *The Business Corporations Act* or *The Co-operatives Act, 1996*.

The appropriate choice depends on the organization's purpose and objectives. The following chart outlines some of the options and their advantages and disadvantages.

	Community Service (Non-profit) Co-operative	Non-profit Corporation	For-profit corporation	For-profit Co-operative
Purpose	To meet social, cultural and economic needs of members or the broader community.	To meet social, cultural and economic needs of members or the broader community.	Profit for shareholders on investment of time or money.	Service and saving for members.
Ownership	By members.	By members.	By shareholders.	By members.
Control (voting)	One member, one vote, no proxy voting.	One member, one vote unless otherwise specified in the articles or bylaws.	The number of voting shares held per shareholder.	One member, one vote, no proxy voting.
Liability	Members limited to membership amount. Directors can be liable.	Limited to the investment. Directors can be liable.	Shareholders limited to share subscription. Directors can be liable.	Members limited to share subscription. Directors can be liable.
Distribution of surplus or earnings	Surplus remains in co-op. Surplus goes to another non-profit group at time of dissolution.	Surplus remains in corporation. Surplus goes to the membership or to another charitable organization at time of dissolution.	Dividends paid on shares. Rate set by Board of Directors.	To members in proportion to use of service. Allocated, but members may choose to reinvest.

Purpose

The purpose of a not-for-profit business is generally to provide programs or services either to a defined membership or to the broader community. This is true for both non-profit corporations and non-profit co-operatives. Some examples are child care centres, community recreation halls, and community health clinics.

The purpose of a for-profit corporation, whether it is the corner drugstore or the largest manufacturer, is to make a profit for its owners on the capital that has been invested. This is done by producing or selling goods and/or services for sale to the public.

The purpose of a for-profit co-operative is to provide its members with quality goods and services rather than a direct return on investment. The most common examples are retail co-operatives.

Ownership

Non-profit corporations and co-operatives are owned by persons who purchase memberships in the organization.

A for-profit corporation is owned by its shareholders. This can be a small group of owners or a public corporation that sells its shares on a stock exchange. Shares can generally be sold to anyone at the price a purchaser is willing to pay.

A for-profit co-operative is owned by members, who purchase the shares required in the co-operative's Articles of Incorporation or bylaws. Shares, generally, can only be resold to the co-operative with the approval of the board of directors, and at their par value (original purchase price).

Control

In all forms of corporation, control is in the hands of the shareholders and/or members. All forms of corporation have boards of directors, who guide the affairs of the corporation in the interests of the members or shareholders. The board is responsible for overseeing the operations of the corporation and for hiring a manager to oversee the day to day operations.

In a for-profit corporation, shareholders vote according to the number of shares they own. Therefore, the more shares a person has, the more votes that person can exercise. If individual shareholders cannot vote or choose not to, they may assign their voting rights to other individuals, who then become the absent shareholders' proxies. Thus, even in large corporations, if one person owns enough shares (either directly or by proxy), that person can effectively control the operation.

In a co-operative, each member has only one vote regardless of the amount of money that member has invested in the co-operative, and proxies are not permitted. This is true for both for-profit and non-profit co-operatives.

Another important difference in the ownership and control structures of co-operatives from other forms of corporations is the way boards of directors are chosen and who may serve on the Board. Directors in a business corporation are not required to be shareholders. Non-profit corporations may also elect non-members to be directors.

The directors in a co-operative must be members, or delegates representing members, in the case of federations or other co-operatives with delegate structures. The members who become directors are elected by other members or delegates. Only the members of a co-operative can remove a director from office.

Liability

The liability of all forms of corporation is limited to the investment of a shareholder or member.

Directors, however, may be liable to the corporation and its owners in certain circumstances and should be fully aware of their legal responsibilities.

Distribution of Profits or Surplus

In a non-profit corporation or co-operative, any profits must be retained by the corporation for its future development. Earnings are not to be distributed to members.

In a business corporation, profits can be reinvested in the business, and/or distributed to the owners in the form of dividends in proportion to the number of shares they own. Dividend rates are normally set by a corporation's board of directors.

In a co-operative business, any surplus at the end of the fiscal year is placed either in reserve for reinvestment in the business, or allocated to members' accounts as a patronage refund. All or part of these funds can be paid to the members, or kept in the business as additional members' shares or loans. In either case, the amount allocated to a member is in proportion to that member's use of the co-operative. In a worker co-operative, patronage dividends are normally based on hours worked and, in effect, increase the members' wages.

If the co-operative is set up as a non-profit organization, that fact must be noted as a restriction in the articles. It could be worded as follows: "The co-operative shall carry on business without the purpose of financial gain for its members. Any surplus resulting from the operations of the co-operative shall be transferred to reserve and shall not inure or be payable to any member."

The Co-operative Difference

A co-operative is owned and democratically controlled by its members. Surplus is allocated to the members in proportion to their purchases or use of the goods or services produced by the co-operative. Each member has one vote regardless of the investment that member holds in the co-operative. There are three important differences between co-operatives and other types of business: purpose, the way financial surplus or profit is used or distributed, and the ownership and control structure. These factors must be considered when making a decision regarding business structure.

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